FOO FIO NA

v.

DR SOO FOOK MUN & ANOR

FEDERAL COURT, KUALA LUMPUR
STEVE SHIM CJ (SABAH & SARAWAK)
ABDUL MALEK AHMAD FCJ
MOHTAR ABDULLAH FCJ
[CIVIL APPEAL NO: 08-25-2001(W)]
19 NOVEMBER 2001

CIVIL PROCEDURE: *Appeal - Leave to appeal - Question of importance upon which further argument and a decision of the Federal Court would be to public advantage - Medical negligence - Bolam test - Courts of Judicature Act 1964, s. 96(a)*

The question of law postulated in the instant application for leave to appeal to the Federal Court against a decision of the Court of Appeal was: whether the 'Bolam Test' on medical negligence as enunciated in *Bolam v. Friern Hospital Management Committee* applies in all aspects of medical negligence.

Held:
Per Steve Shim CJ (Sabah & Sarawak)

[1] The question posed was one of importance upon which further argument and a decision of the Federal Court would be to public advantage. The question concerned the rectitude of the 'Bolam Test', in particular the duty and standard of care of a medical practitioner in advising a patient on the inherent or material risks of a proposed treatment. (pp 12 h-13 a)

[Leave granted.]

*[**Bahasa Malaysia** Translation Of Headnotes]*

Persoalan undang-undang yang dituntut di dalam permohonan semasa untuk kebenaran bagi merayu kepada Mahkamah Persekutuan terhadap satu keputusan Mahkamah Rayuan adalah: sama ada "Ujian Bolam" atas kecuaian perubatan yang disebut di dalam *Bolam v. Friern Hospital Management Committee* terpakai dalam kesemua aspect kecuaian perubatan.

Diputuskan:
Oleh Steve Shim HB (Sabah & Sarawak)

[1] Soalan yang dikemukakan adalah suatu yang penting di atas yang mana hujahan selanjutnya dan keputusan Mahkamah Persekutuan akan mendatangkan manfaat kepada awam. Persoalan berhubung dengan ketepatan "Ujian Bolam" tersebut, khususnya kewajipan dan tahap penjagaan seorang pengamal perubatan dalam menasihatkan seseorang pesakit mengenai risiko material atau sedia ada sesuatu rawatan yang dicadangkan.

[Kebenaran diberikan.]

Legislation referred to:
Courts of Judicature Act 1964, s. 96(a)

For the applicant - Mohamad Ariff Md Yusoff (Rajashree Suppiah & See Eng Teong); M/s Cheang & Ariff Advoc
For the 1st respondent - PS Ranjan (Manmohan S Dhillon); M/s PS Ranjan & Co
For the 2nd respondent - GL Ambrose; M/s Chooi & Co

[Appeal from Court of Appeal; Civil Appeal Nos: W-02-281-1999 & W-02-344-1999]

Reported by Gan Peng Chiang

JUDGMENT

Steve Shim CJ (Sabah & Sarawak):
This is an application for leave to appeal against the decision of the Court of Appeal given on 5 April 2001. The main question for which leave is sought is stated as follows:

> Whether the 'Bolam Test' as enunciated in *Bolam v. Friern Hospital Management Committee* [1957] 2 All ER 118 in the area of medical negligence should apply in relation to all aspects of medical negligence.

Having heard arguments from counsel for the parties concerned, we are of the view that the question posed is one of importance upon which further argument and a decision of this court would be to public advantage. In this regard, our attention has been drawn to later case jurisprudence from Australia and other Commonwealth countries which it is contended, has refined the "Bolam Test" to such an extent that it may now be necessary for this court to reconsider the "Bolam Test".

It may be noted that in this case, the particular aspect of medical negligence relates more specifically to the duty and standard of care of a medical practitioner in providing advice to a patient on the inherent or material risks of the proposed treatment.

In the circumstances, we are satisfied that the question postulated above falls within the ambit of s. 96(a) of the Courts of Judicature Act 1964. Leave is therefore allowed.